

# REVIEW OF THE STATE OF THE BRITISH NATION.

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Thursday, January 26. 1710.

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I once said something in this Paper, relating to the Appeals so much talk'd of here, in the Case of Ecclesiastical Judicatures and Sentences in Scotland— And I cannot but think the present Time the proper Season to go on with that Debate.

I shall not say much to the present Appeal of Mr. Greenshields, from the *Lords of the Session* to the *British Peers* in Parliament; I know very well, That an Appeal lies from their Lordship's Sentence to the Parliament, as the supreme Judicature of Britain, I mean the *Peers*, for the *Commons* are no Judicature at all; nor can they administer an Oath, or read an Affidavit in their *House*,

or receive any Evidence upon Oath, tho' that Oath were administred by a Magistrate out of the *House*.

But I come to speak to a more difficult Case than this— And that is, Whether an Appeal lies to the *House of Lords* from any Church-Censure in Scotland— And if it should appear, it does, I crave Leave to start a few Niceties, which, I believe, the *House of Peers* will rather leave undetermin'd as they are, than enter into a Resolution of at this time.

And here, that I may clear my Way as I go, I shall explain my self upon Fundamentals, and let you see plainly, upon what Foundation it is I argue—

I am not entering into an original Dispute of Magistracy, and the Power or Right they have to be *Custos utriusque Tabula*, Keepers of both Tables; a Doctrine, which will perhaps, if too far extended, bring us to Erastianism in Government, or if too remotely thrust from us, set up an Independency of the Ecclesiastic Jurisdiction, as compleat, as may come up to Popery and Infallibility.

But I think, the Debate of this will not be concern'd with me here, or if it does, I have a Medium to build upon, that reconciles these Extremes, at least as far as concerns the present Case— And this is the Union— And by this I take upon me to offer, *as my Opinion only, and with Submission to fair Reasoning*, That no Appeal can lie from the Censure or Sentence of any Ecclesiastic Judicature in *Scotland*, neither subordinate or supream, to the *British Parliament*— Nor is it, I think, any sufficient Argument in this Case, to say, suppose it were true, which I do not find is own'd, that Appeals did lie from the said Ecclesiastic Judicatures in *Scotland* to the *Parliament of Scotland*— For all this is still answer'd by the Union. And in this, *by the way*, the Church of *Scotland* may come to find her Constitution better secur'd by the Union, than she ever thought it was, and perhaps than those that made the Union ever thought or intended; and I presume to say, the Church of *Scotland* is better secur'd, and made more absolutely independent of the Church of *England*, by the necessary Consequences, and the Nature of the Union, than by the Letter of the Articles— And I shall explain this in the Course of the Argument.

But to come to the Argument it self; whether the Right of Appeals, vested by the Constitution of *Britain*, in the *Peers of Britain* assembled in Parliament, extends it self so far, as to empower the said *Peers* to take Cognizance of Ecclesiastical Cases determin'd by the Church Judicature of *Scotland*.

I think, I have already made it clear, that Appealing to the Parliament from inferior Courts of the Church, is irregular, and cannot be allow'd by the said *Peers*, tho'

Appeals were allow'd from the superior Ecclesiastic Courts, because all Appeals from an Inferior Judicature lie to the next immediate Superior, and so on to the Supream.

Nor is the Form, which some People are pleas'd to call an Appeal, consistent with the Nature of the Thing it self— To say, I appeal from you to the Queen and *British Parliament*, tho' Instruments be taken of the Thing— *is to say nothing at all*; or will it stop any Legal Proceedings here in the least? For tho' the Appeal did lie from the Presbyteries or Synods to the Parliament, yet according to the Usage of the Parliament, it is no Appeal to Parliament, till a formal Appeal or Petition is deliver'd to, receiv'd by, and lodg'd with the said *Peers*, pass'd a Vote in their *House*, and enter'd in their Journals; this is the *Lords* accepting to try the Cause, and bring it to their Bar— And upon due Intimation of this to the said Inferior Courts of Judicature, then and not before, their Proceedings are stopp'd by an Appeal.

The Gentlemen that thought fit to assault the Church Judicatures in *Scotland* in that new-fashion'd Manner of an Appeal— and that frighten the more ignorant People, who are unacquainted with the Customs and Usages of these Things, may, if they think it worth their while, take this Hint with them— They may for a while scare People with these Notions—but like an *ignis fatuus*, the Amusement will continue but a short while— And they will not only be convinc'd of the Mistake themselves, but the Country will also be better inform'd, than to be frighted with the Noise of Appeals, when the Thing it self is neither effectual nor affrighting.

But I come now to the main Thing of all; The Question I am upon, is; Are Appeals of any Kind to be made from the Ecclesiastic Church Judicatures in *Scotland*, or are they not?

I am not ignorant of the Nicety of the Question, I know, no Court is very forward to lessen their own Authority— All the Judicatories that I have met with, seem to show themselves willing to support and

and extend their Powers, as much and as far as they can, and to grant the Subordination of other Courts to their Jurisdiction ; it is very natural for Men to do so as Men, as well as Courts of Judicature *Qua Courts* ; nor is it for me to determine, how far the Jurisdiction of the *Peers of Britain* does or does not extend : But I shall speak my Opinion, with my Reasons for it, as much within the Compass of Modesty as possible.

To appeal, is to complain to a Superior Power, of some suggested Injury receiv'd, or to be receiv'd, from an Inferior.

In order to have a Stop put to the Injury, the Effects apprehended from it, or the Proceeding of it to a greater Height —

This, as it is before us in Matters Judicial, is generally an Appeal from the Sentence of an Inferior Judicature to a Superior —

It needs not at all, that I make any Comparison of Power here, between the *House of Peers of Britain*, and the General Assembly of the Church of *Scotland* ; That's a Work, Some would be glad to see me venture upon, in Hopes, no doubt, that I should certainly miscarry in the Attempt.

But thus far I may go without Hazard — (Viz.) To say; They are both *Sovereign Judicatures* ; I say *Sovereign*, because the *QUEEN* is present in them both —

I know, it would be objected against, as leading into another Dispute, if I should say, the *QUEEN* presides in the general Assembly — But neither may her Majesty be said to preside in the *House of Peers* Judicially. A Tryal is heard and determin'd at the Bar, tho' the *QUEEN* be not there — Whereas in the Assembly, her Majesty is ever there ; the *QUEEN's* Commissioner is always there ; and whether her Majesty presides there judicially or no, is no Part of the present Question — We say in *England*, the *Sovereign* cannot but preside wherever She is present ; they are therefore both *Sovereign Courts*.

Now to appeal from the General Assembly to the *House of Lords*, is to appeal from a *Sovereign Court* to a *Sovereign Court*, from a *Supream Judicature* to a *Supream Judicature*, and from the *QUEEN* to the

*QUEEN* — What any Body will make of such an Inconsistency, as this, Time must determine ; for my Part, I can see no Manner of Coherence in it.

How far the Gentlemen, that seem to aim at this new Proj<sup>c</sup>t, flatter themselves with Expectations, I know not ; Mr. *Skinner*, whose Case, we are told, will be the first, may make the Experiment, if he thinks fit ; he has thought fit to decline the Authority of the Ecclesiastical Judicatures of *Scotland*, and appeal to the *Queen* and *Parliament* from a *Synod*, which is an Inferior Court — What Cognizance the *House of Lords* can take of such an Appeal, I confess, I do not see ; their Lordships will, no doubt, do Justice to the *Church of Scotland*, as well as to the *Man*, when the Case comes before them.

But I have some Scruples upon me, which I do not see who can answer, and which, as I noted above, are of a very nice Nature, and require to be spoken very nicely to, with Respect to the Nature and Form of the Procedure in these Appeals : Supposing the *House of Lords* should determine, that they do lie before them — I shall propose them in my next.

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